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10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. R-2032

13 ANDREW VERNON ESLINGER

A C C U S A T I O N

14 7533 North 1st Street, #201
15 Fresno, CA 93720

16 Respiratory Care Practitioner License No. 15883

17 Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Stephanie Nunez (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Respiratory Care Board of California.

22 2. On or about January 7, 1993, the Board issued Respiratory Care
23 Practitioner License Number 15883 to Andrew Vernon Eslinger (Respondent). Said Respiratory
24 Care Practitioner License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on January 31, 2007, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereinafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states, in pertinent part:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes: . . .

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction."

7. Section 3752 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw

1 his or her plea of guilty and to enter a plea of not guilty, or setting aside the
2 verdict of guilty, or dismissing the accusation, information, or indictment.”

3 8. California Code of Regulations, title 16, section 1399.370, states, in
4 pertinent part:

5 “For the purposes of denial, suspension, or revocation of a license, a
6 crime or act shall be considered to be substantially related to the
7 qualifications, functions or duties of a respiratory care practitioner, if it
8 evidences present or potential unfitness of a licensee to perform the
9 functions authorized by his or her license or in a manner inconsistent with
10 the public health, safety, or welfare. Such crimes or acts shall include but
11 not be limited to those involving the following:

12 “(a) Violating or attempting to violate, directly or indirectly, or
13 assisting or abetting the violation of or conspiring to violate any provision or
14 term of the Act. . . .

15 “(c) Conviction of a crime involving driving under the influence or
16 reckless driving while under the influence.”

17 COST RECOVERY

18 9. Section 3753.1 of the Code states:

19 “(a) An administrative disciplinary decision imposing terms of
20 probation may include, among other things, a requirement that the
21 licensee-probationer pay the monetary costs associated with monitoring
22 the probation. ”

23 10. Section 3753.5, subdivision (a) of the Code states:

24 “In any order issued in resolution of a disciplinary proceeding
25 before the board, the board or the administrative law judge may direct
26 any practitioner or applicant found to have committed a violation or
27 violations of law to pay to the board a sum not to exceed the costs of
28 the investigation and prosecution of the case.”

1 11. Section 3753.7 of the Code states:

2 "For purposes of the Respiratory Care Practice Act, costs of
3 prosecution shall include attorney general or other prosecuting attorney
4 fees, expert witness fees, and other administrative, filing, and service
5 fees."

6 FIRST CAUSE FOR DISCIPLINE

7 (Conviction of Crimes involving child endangerment and reckless
8 driving and/or driving under the influence.)

9 12. Respondent is subject to disciplinary action under section 3750(d) of the
10 Business and Professions Code and Code of Regulations section 1399.370(c) in that respondent
11 has been convicted of crimes substantially related to the qualifications, functions, and duties of a
12 licensed respiratory care practitioner. The circumstances are as follows:

13 13. On or about June 3, 2005, a criminal complaint was filed against respondent
14 in Fresno County Superior Court, Central Division, Case No. F05904233-4. The criminal
15 complaint alleged that, on or about May 25, 2005, respondent committed violations of Penal Code
16 section 273a(a), felony child endangerment, and of Vehicle Code section 23152(a), misdemeanor
17 driving with a .20% or higher blood alcohol level, by driving a vehicle while under the influence
18 of alcohol and with a passenger who was a minor under the age of 14.

19 14. The criminal complaint arose from respondent's arrest on May 25, 2005 for
20 transporting his eight-year-old son in a vehicle while respondent was driving recklessly and under
21 the influence of alcohol.

22 15. On or about September 1, 2005, respondent pleaded "no-contest" to both
23 counts of the criminal complaint and was convicted and sentenced by the Court to a three-year
24 probation with special terms and conditions. The Court ordered that if respondent completes his
25 probation terms for one year, the finding on count one will be reduced from a felony to a
26 misdemeanor.

27 PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged and that, following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 15883, issued to Andrew Vernon Eslinger;
2. Ordering Andrew Vernon Eslinger to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and/or
3. Taking such other and further action as deemed necessary and proper.

DATED: June 15, 2006

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
State of California
Complainant